REMARKS

Claims 15-16, 22-26 and 30-39 are currently pending, which have been set forth above by way of courtesy. No amendments to the claims have been undertaken as part of this submission, which is in response to the Office Action mailed October 21, 2003 ("Office Action"). Applicants respectfully request favorable consideration of the present application in light of the following remarks.

On Page 2 of the Office Action, claims 15-16, 22-26, 30-31 and 33-39 were rejected under 35 USC 103(a) as being unpatentable over Raymond '331 in view of Feler et al. On Page 3 of the Office Action, claims 15-16, 22-26, 30-31 and 33-39 were rejected under 35 USC 103(a) as being unpatentable over Raymond '153 or '154 in view of Feler et al. On Page 4 of the Office Action, claims 15-16, 22-26, 30, 32, 33 and 35 were rejected under 35 USC 103(a) as being unpatentable over Hadzic et al in view of Feler et al. Applicant respectfully traverses these rejections as follows.

Claim 15, as previously presented, recites "A method for detecting the presence of a nerve adjacent the distal end of at least one probe or surgical tool, comprising: (a) emitting a stimulus pulse from an electrode disposed on a probe or surgical tool as said probe or tool is introduced towards the patient's spine from a generally lateral direction; (b) detecting neuro-muscular responses to the stimulus pulse in at least one of a plurality of spinal nerves; and (c) concluding that the electrode disposed on the probe or surgical tool is positioned adjacent to a first spinal nerve when the neuro-muscular response detected in the first spinal nerve is detected

as a current intensity level less than or equal to a neuro-muscular response signifying close proximity to the first spinal nerve."

While the cited references (Raymond '331, Raymond '153, Raymond '154, Hadzic et al, and Feler et al) are generally relevant to identifying the location of nerves, none of these references appear to disclose the claimed feature of identifying the location of nerves as a probe or surgical tool is introduced towards the patient's spine in a generally lateral direction as set forth in Claim 15. On Pages 4-5 of the Office Action (under "Response to Arguments"), the Examiner addressed the "generally lateral direction" claim language, deeming Applicants' arguments unpersuasive by asserting that the probe or surgical tool must approach the nerve from the lateral approach.

Applicants respectfully point out, however, that the Examiner mischaracterized (or simply mis-read) the claim language of previously presented Claim 15, which in relevant part reads: "emitting a stimulus pulse from an electrode disposed on a probe or surgical tool *as said probe or tool is introduced towards the patient's* ***spine*** *from a generally lateral direction.*" (Emphasis added). More specifically, the claim language of previously amended Claim 15 did not – as asserted in the Office Action – indicate that the probe or tool was introduced towards the patient's spinal nerves. While it may be true that a probe must approach a nerve from a lateral direction (if you treat the nerve as a line, as suggested in the Office Action), the same is not true of the approach to the patient's spine. Indeed, a patient's spine can be approached through any number of different directions, including generally posteriorly (such as by making an incision in the back or posterior region of the patient), generally anteriorly (such as by making an incision in

the front or anterior region of the patient), and – as set forth in Claim 15 – generally laterally (such as by making an incision in the side or lateral region of the patient). This feature of Claim 15 is supported, by way of example, with reference to FIGS. 1 and 4 in the present application, wherein probe or tools 20, 22 are shown being advanced toward the patient's spine in a generally lateral direction.

The cited references (along with the other references of in the record) appear to be silent with regard to the feature of detecting the presence of nerves while approaching a patient's spine from a generally lateral direction. Given this, Applicants respectfully submit that one of ordinary skill in the art would not have been led to the present invention (as now claimed) after consulting with the cited references. As such, Applicants respectfully submit that these references, whether taken alone or in combination, fail to contain the requisite teaching or suggestion that would have lead one of ordinary skill in the art to the present invention as set forth in amended claim 15. Claim 15 is believed to be in proper condition for allowance and an indication of such is hereby respectfully requested.

Claims 16, 22-26 and 30-39, being dependant upon and further limiting independent claim 15, should be allowed for the reason set forth in support of the allowability of claim 15, as wall as the additional limitations they contain.

CONCLUSION

Favorable consideration and allowance of the claims are respectfully requested. In the event that there are any questions concerning this Response to Office Action or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,
NUVASIVE, INC.

By: _____
Jonathan Spangler, Esq.
Registration No. 40,182

10065 Old Grove Road
San Diego, CA 92131
Tel.: (858) 243-0029

Date: April 21, 2004